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*P 1.30*

SUBJECT: (Optional) Executive Registry  
76-6596/1

FROM: EXTENSION NO. *1570*  
**Legislative Counsel** DATE 15 April 1976 STAT

TO: (Officer designation, room number, and building) OFFICER'S INITIALS  
COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

	DATE		OFFICER'S INITIALS	COMMENTS
	RECEIVED	FORWARDED		
1. Director				<p>Attached for your information are pages from the 13 April Congressional Record containing remarks by Rep. Abzug in opposition to the use of polygraphs by the Government. Ms. Abzug has inserted in the Record a number of letters sent to her by executive agencies in response to inquiries from the Congresswoman. Your letter to her of 25 February 1976 is attached.</p> <p style="text-align: right;"><i>George L. Cary</i> Legislative Counsel</p> <p style="text-align: right;"><b>EXECUTIVE REGISTRY FILE</b> <i>P 1.30</i></p>
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H 3346

CONGRESSIONAL RECORD—HOUSE

April 13, 1976

I commend this bill to my colleagues' attention.

### BAN ON POLYGRAPHS INTRODUCED

The SPEAKER pro tempore. Under a previous order of the House the gentleman from New York (Ms. ASZUG) is recognized for 10 minutes.

Ms. ABZUG. Mr. Speaker, the Government Operations Committee recently released a report, entitled "The Use of Polygraphs and Similar Devices by Federal Agencies," which recommended a complete ban on the use of polygraph and similar "lie detector" devices by the Federal Government. The hearings and investigation upon which the report was based were conducted by the Subcommittee on Government Information and Individual Rights, which I presently chair. The subcommittee found that there is no hard evidence that polygraphs can distinguish deception from truth. Instead, it found that an individual's basic constitutional rights and sense of dignity and privacy are violated by use of these machines.

Polygraphs are still extensively used for a variety of purposes by private industry and by several agencies of Government. These agencies include the Postal Service, Customs Service, Federal Reserve System, Drug Enforcement Administration, FBI, CIA, and a number of components of the Defense Department. It has been estimated that about 200,000 persons are tested yearly in pre-employment and employment situations.

I wrote to the agencies that the report determined are giving polygraph tests and asked each to follow the report's recommendation to discontinue such use. The replies have been disappointing. None of the agencies agreed to observe the committee recommendation. The CIA, for example responded that the polygraph "is an integral and essential part of security processing to determine the security eligibility of persons for Agency employment and for operational purposes." The new Director of the Central Intelligence Agency, George Bush, in a letter to me dated February 25, 1976, boasts that "during the period 1963 through mid-1974, of those applicants for employment rejected on security grounds, over 60 percent were rejected on the basis of information developed principally or solely during polygraph interviews."

Rather than limiting testing, it has been reported that the CIA is resuming use of polygraphs for periodic testing of its employees. The privately published newsletter, Privacy Journal, says in its March 1976, issue:

The first result of leaks from Congressional committees investigating intelligence practices was for the Central Intelligence Agency to notify all employees of the resumption of periodic polygraph tests. The word circulated around CIA headquarters was that the agency's examiners were previously occupied on Vietnam-related work. CIA says an employee is expected to get plugged in every five years, although no objection is raised if he refuses. Results are not shared with the employee. CIA now uses a computer to categorize stress measures on the various individual polygraph charts.

Mr. Speaker, virtually every expert is convinced that the polygraph is unreliable to distinguish truth from falsehood. The Government Operations Committee agrees with that conclusion. So does the Department of Justice, which consistently opposes the admission of polygraph evidence at trials. Yet the CIA continues to reject applicants based on polygraph evidence.

I submit this is grossly unfair to the individuals so rejected who have to bear the burden for the rest of their lives of having been denied employment by CIA for security reasons. It is also unfair to use this machine to retest employees when there is no reason to suspect them. I also wonder whether an employee is not open to suspicion if he or she refuses to get "plugged in" every 5 years. It might well be the case that the people rejected by CIA or who refuse to be retested are merely nervous of the machine and its operators, and are not security risks.

After release of the report on polygraphs, I received several heart-rending letters from people who feel they were abused by its use. I submit these letters for the Record at the conclusion of my remarks. I have omitted the names of the people who wrote to me out of concern for their protection, but my colleagues are welcome to see these letters in the committee office.

Reading these letters, I am reminded of Richard Nixon's remark on a White House tape:

I don't know anything about polygraphs, and I don't know how accurate they are, but I know they'll scare the hell out of people.

I might add that the machines are totally ineffective in the case of pathological liars or those who are trained to deceive, so that instead of screening out true risks, the polygraph will often just screen out the sensitive person.

Mr. Speaker, I also submit for the record copies of the letters I have received from the Departments of Treasury and Defense, the CIA, the Postal Service, and the Federal Reserve System. I have received no substantive reply or acknowledgement from the Justice Department. The reply of the Defense Department to my request is typical. If I cut through the Department's profusion of words correctly, it is also not changing its policy on the use of these machines.

The report of the Government Operations Committee addressed itself to use of so-called lie detector devices by the Federal Government. However, the use of these machines in private industry is far more extensive and the repercussions in terms of civil liberties is severe. Often prospective employees are not informed of the polygraph requirement on the application. They are simply told to appear at an address to take a test. The findings of the polygraph tester are generally accepted unquestioningly by the employer, especially when low paid service employees are concerned. While the standards for polygraph examiners have improved, in some States anyone who buys a polygraph machine can go into business.

There is also the matter of the actual and potential invasions of privacy involved—the probing for details of the

subject's sex life, fantasies, fears; the search for union troublemakers and political activists. The polygraph results are often stored and filed away whether the subject is hired or not, and there are cases of employers trading lists of people who have failed polygraph exams.

These are only some of the reasons which have led 13 States to limit or ban the use of polygraphs for employment purposes. Unfortunately, many of the State laws are full of exemptions and exceptions. Congress has made several attempts at banning polygraphs in employment situations, one of the last being Senator Ervin's bill, S. 1688, which passed the Senate March 7, 1974.

But, Mr. Speaker, no bill has passed both Houses, and since persuasion, entreaty, and evidence do not seem to have affected most public and private employers using polygraphs, I am submitting a bill to prevent the use of polygraph testing in connection with Federal and private employment.

The letters I received from private citizens and from several Federal agencies follow, as does the text of the bill I have introduced:

—LETTERS RECEIVED FROM PRIVATE CITIZENS—

FEBRUARY 2, 1976.

DEAR REPRESENTATIVE ASZUG: I am an honest person, but because of a nervous condition, a "lie detector" test cost me a job. Please ban the polygraph!

Sincerely,

FEBRUARY 10, 1976.

DEAR Ms. ASZUG: Having read recently in the paper . . . the article stating that you are proposing to disban lie detector tests on the Federal, State, and Local levels, I was inspired to write this letter. If there is any information you can send me in regards to this bill or proposal I would very much appreciate it.

I am writing this to support you one-hundred percent in this effort. Last year in Feb. or March, I was discriminated by a polygraph test given by the police department. . . . (I'm sure you have received many such letters carrying examples of discrimination). . . . I was in the process of completing my Master of Science Degree in Counseling and had applied to the police to be a police woman. . . . I passed all the necessary IQ and personality tests and the last step to be taken before going before the police commission board was to take the lie detector tests . . . without going into any of the details there were I believe 2 or 3 questions re: personal lifestyle, and because I did answer these truthfully I was axed from this job possibility.

Now, I felt that not only were the questions themselves discriminating, but the manner in which the test was given was too. The person giving me the test stated that "We don't hire liars, and the test is hooked up to your nervous system" . . .

I am a member of N.W.G.P.A. and one of my very good friends is a charter member (there's very few of them) of the National Gay Task Force . . .

Anyway, I feel that because of this test, I am now being forced to work in a secretarial-bookkeeper position (Not at all in my interests). I firmly believe that if a person is not allowed to be or become all that he or she is, (especially when the truth is told), there is a flat case of discrimination. I have never taken this issue further (suits or the like) as I would be ruined in this town.

Thank you for the opportunity of being able to vent my thoughts and emotions on

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PROVISIONAL RECORD

I cannot see how section 2 could arouse any controversy. It merely instructs the SSA to follow what the Supreme Court has made standard practice for any administrative agency which proposes to deprive an individual of benefits which he has previously enjoyed. Every municipal or State welfare agency in the country must follow the "fair hearing" requirement of *Goldberg v. Kelly*, 394 U.S. 254 (1970); the SSA, now a major source of support for so many of the elderly and disabled, should not be granted a license to deprive them of their support without due process. The bald allegation that appointment of a representative payee is for "the best interests" of a recipient, and therefore should be exempt from due process requirements, defies both commonsense and recent court rulings, such as *McAuliffe v. Carlson*, 377 F Supp 896 (D. Ct. Conn., 1974), 386 F Supp 1245 (D. Ct. Conn., 1975), and *Dale v. Hahn*, 486 F 2d 76 (CA 2, 1973).

Finally, section 3 calls upon the SSA to take "whatever legal steps are necessary to protect the interests of individuals whose benefits are paid to representative payees." The section gives the SSA the obligation to enter court, when that is appropriate, in order to demand an accounting of the funds from the payee; and, if appropriate, he is to sue to recover any benefits that a representative payee has improperly used or accumulated for his own benefit. The section also gives the SSA the discretion, first, to require all representative payees to make the same periodic accountings that are required of every guardian in every State court, and second, to require that representative payees furnish bond or sureties sufficient to protect the interests of the beneficiary.

These are hardly radical measures. Sections 1 and 2 of this bill merely require that the SSA observe the same constitutional due process requirements that bind every other welfare agency in the country. Section 3 simply gives to social security benefits paid to a third party the same protection that are given to the assets of any person with a guardian or a conservator. It should be noted, too, that the Veterans' Administration, when appointing a representative payee for a beneficiary, follows all the requirements set forth in this bill.

The text of the bill follows:

H.R. 13195

SECTION 1. (a) Section 1383(a)(2) of the Social Security Act is amended to read as follows:

"(2)(A) Payments of the benefit of any individual may be made to any such individual or to his eligible spouse (if any) or partly to each; or, if the Secretary finds that a recipient of benefits under this subchapter is unable to manage funds because of mental or physical incapacity or minority, all or part of the payments, in an amount necessary to protect the interest of the recipient, may be paid to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual or spouse."

(b) Section 405(j) of the Social Security Act is amended to read as follows:

"(j)(1) If the Secretary finds that an applicant is unable to properly manage benefits because of mental or physical disability or

minority, certification of payment of part or all of the benefits may be made, regardless of the legal competence or incompetence of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person."

Sec. 2. Section 1383(c)(1) of the Social Security Act is amended to read as follows:

"(c)(1) The Secretary shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this subchapter with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, or the ability of such individual to receive and manage his own benefits, if such individual requests a hearing on the matter in disagreement within thirty days after notice of such determination is received."

Sec. 3. (a) Section 1383(a)(2), as amended, is further amended by adding the following subparts (B) and (C):

"(B) The Secretary shall, when necessary, take appropriate legal action to protect the interests of individuals whose benefits are paid to representative payees under part A of this section. Whenever it appears that court appointment of a fiduciary is necessary for the proper management and protection of an individual's benefits, or that a previously appointed fiduciary has mismanaged or misapplied an individual's benefits or failed to render a proper accounting, the Secretary may, by his duly authorized attorney, appear in the court having original, concurrent, or appellate jurisdiction over said cause and make a proper presentation of such matters. The Secretary may petition for the appointment or removal of a fiduciary, and for the citing of a fiduciary to account. The Secretary may, in his discretion, require all representative payees to make periodic accountings and to furnish bonds or sureties sufficient to protect the interest of the beneficiary. The Secretary may take legal action to recover any benefits improperly disbursed or accumulated by a representative payee."

"(C) Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment or removal of a fiduciary who receives payment under this section, or in connection with any other court proceeding hereby authorized."

(b) Section 405 of the Social Security Act, as amended, is further amended by adding the following subsection (j)(2):

"(j)(2) The Secretary is authorized to take effective legal action to protect the interest of any beneficiary whose benefits are paid to a representative payee under sub section (1) of this section. The Secretary may, where necessary to protect an individual's estate derived from benefits under this title, appear in the court of proper jurisdiction and petition for the appointment or removal of a fiduciary, or for the citing of a fiduciary to account. The Secretary may, in his discretion, require any representative payee to account periodically and to furnish bonds or sureties sufficient to protect the interest of the beneficiary. The Secretary may, pending investigation of mismanagement or misuse, suspend payments to any representative payee and accumulate them on behalf of the beneficiary or pay them temporarily to the person having custody of the beneficiary. The Secretary may take legal action to recover benefits improperly disbursed or accumulated, and may incur costs in connection with any court proceeding authorized by this subsection."

#### THE VICTIMS OF CRIME ACT OF 1976

The SPEAKER pro tempore. Under a previous order of the House, the gentle-

man from New Jersey (Mr. RODINO) is recognized for 5 minutes.

Mr. RODINO. Mr. Speaker, last Friday I introduced the Victims of Crime Act of 1976, legislation to provide for Federal grants to States that operate crime victim compensation programs. I have been joined in sponsoring this legislation by 28 colleagues, several of whom have previously introduced legislation on this subject.

I am particularly pleased to be a sponsor of this legislation, for it will help States to assist the forgotten person in our criminal justice system—the victim of crime. Several of this bill's cosponsors and I have previously sponsored legislation on this subject in an attempt to involve the Federal Government in recognizing the needs of crime victims.

Our previous bills were the subject of extensive hearings conducted by the Subcommittee on Criminal Justice, under the leadership of Representative WILLIAM L. HURWARTZ. Some 25 witnesses testified during these hearings, including Members of Congress, State officials, academic experts, representatives of the Justice Department, the American Bar Association, and three crime victims.

Using the evidence gathered at these hearings, the Criminal Justice Subcommittee drafted the bill that is being introduced today. The subcommittee's drafting was thorough and painstaking, extending through seven meetings. The result of this effort is a bill that bears the craftsmanship that has been the hallmark of the Criminal Justice Subcommittee.

The subcommittee bill, I believe, is one that deserves the support of all of us. It supports State crime victim programs presently in existence and will encourage other States to set up such programs. It does this by providing Federal reimbursement to a State with a crime victim compensation program.

A State with a qualified program will be reimbursed for 50 percent of the claims it pays to victims of State crimes. The bill requires that the State program compensate the victims of certain crimes falling within the exclusive jurisdiction of the Federal Government. In return, however, the bill provides that the State program will receive 100-percent reimbursement for these awards.

Some dozen States presently have crime victim compensation programs, and each of them has a program different from the others. For example, some States use the courts to make awards, some use an independent agency, and some use another State agency, such as a workman's compensation bureau. This legislation is drafted to give each State the maximum authority to design a victim compensation program that it believes best suits its needs. It imposes a minimum number of qualifications for Federal aid. Thus, a State is free to use the courts, an independent agency, or any other agency to administer its program.

This is important legislation that can have a very positive impact upon our criminal justice system. The Judiciary Committee will act expeditiously on it. In fact, the legislation is on the agenda for our next meeting, April 13.

April 13, 1976

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this issue, and I certainly hope that something positive will be done to prohibit the use of these tests.

Very sincerely,

DEAR Ms. ARZUG. I was happy to see a small two paragraph article in the February 5th Daily News reporting that your subcommittee recommended discontinued use of the polygraph machine in government.

As a former employee of a small milk store chain (Golden Gallon of Georgia and Tennessee) I had to take these tests every three months. Before taking my last test, I told the tester I had drank some soft drinks and milk without paying.

I was asked to take the test anyway and the tester . . . used abusive language and everything else he could think of to intimidate me while attempting to make me estimate a larger and larger amount of beverages consumed without paying.

Since then, I have read up on polygraph machines and, along with my personal experience (and demonstrations I have since seen), I am convinced of the farcicality the "lie detector" can represent if only the tester is willing to be unethical. A lie detector, I suggest, is the newest form of torturing the wanted confessions out of citizens.

The polygraph means "guilty until proven innocent." I believe that most of the individuals (and I have talked to at least four) who operate and administer these tests to lower and middle-class individuals do not give a damn about the dignity or the rights of the individual who is subjected to testing. And, most important, citizens are not aware of their rights in dealing with the "lie detector."

I have a B.A. degree in Psychology and am just beginning graduate work. The more I think about this problem the more it touches me and I hope you will consider making this more than just a governmental issue. All people should have these same rights—to deny abuse and ensure their rights and freedom to the largest degree possible.

Sincerely,

FEBRUARY 3, 1976.

Representative BELLA S. ARZUG,  
Chairman, Government Operations Subcommittee,  
House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE ARZUG: After reading an article in February 2nd's Chicago Sun Times about your committee and its dealings on lie detectors, I felt compelled to write to you.

This concerns my daughter and a close friend of hers who were required to take periodic lie detector tests as part of their agreement upon employment at a McDonald's restaurant. The most recent test caused her friend to cry, break out in tears and it emotionally upset my daughter as well. The results, due to the nature of the questions and manner in which they were asked, caused an opinion of suspicion of untruth by the operator and both girls, although not fired, were told they would be able to continue to work there but would be watched. Thus both girls quit rather than work under those conditions.

They both feel the tests were unfair as both are innocent of any wrongdoing and are now out of jobs and since they both finished high school in January, this makes it rough for them.

I feel closer supervision of the employees would be a better solution to McDonald's problem plus a secure locker arrangement for the employees to safeguard their personal property as my daughter has had things stolen from her purse while working, in lieu of the lie detector requirement.

I am in full agreement with your concept

to ban the use of lie detectors through legislative means except for their use in governmental security and hope you continue your efforts in this direction.

Sincerely,

## LETTERS RECEIVED FROM AGENCIES

ASSISTANT SECRETARY OF DEFENSE,  
Washington, D.C., February 11, 1976.

Hon. BELLA S. ARZUG,  
Chairwoman, Government Information and Individual Rights Subcommittee, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR Ms. CHAIRWOMAN: We have reviewed the Committee on Government Operations Report titled, "The Use of Polygraphs and Similar Devices by Federal Agencies," which you forwarded to the Secretary of Defense on January 29, 1976. While the report was most informative, the Department of Defense is unable to concur at this time with the recommendations of the Committee majority.

Realizing the concern of the Committee in the area of protection of the rights of U.S. citizens, the Department of Defense has adopted a comprehensive program on polygraph use to insure the protection of rights of all individuals within the Department of Defense. The stringent conditions and limitations governing polygraph use are contained in a recently published Directive which is attached for your review. In effect, the current Directive is culmination of the efforts that have been made over the past several years in attempting to upgrade the polygraph program to a level that would meet the high standards of your Committee.

In order that the Military Departments might have the benefit of the views contained in the Subcommittee Report, copies are being furnished to the interested agencies. Additionally, this office is requesting a report of polygraph operations within the Department of Defense for the purpose of making an objective assessment of its utility in the investigative process.

Upon completion of these reports, we will advise you further and also address the extent to which a proper balance has been achieved between the legitimate need of the Department of Defense and the equally important need to respect the rights of our military and civilian personnel.

Sincerely,

TERENCE E. MCCLARY,  
Assistant Secretary of Defense.

FEDERAL RESERVE SYSTEM,  
Washington, D.C., March 22, 1976.

Hon. BELLA S. ARZUG,  
Chairwoman, Subcommittee on Government Information and Individual Rights, Committee on Government Operations, Rayburn House Office Building, Washington, D.C.

DEAR MADAM CHAIRWOMAN: I am pleased to respond to your letter of January 29, 1976 which concerns the use of polygraphs in the Federal Reserve System and contains the recommendation of the Committee on Government Operations relating to the use of polygraphs by governmental agencies.

Records of the Board, as well as those of each Reserve Bank, have been reviewed for the purpose of determining those instances in which either the Board or the Reserve Banks have conducted or participated in polygraph examinations. The Board administered no polygraph tests during 1975. However, it appears that polygraph tests were administered to employees of four Federal Reserve Banks during 1975. All of these cases involved criminal larceny and it appears that in most instances the tests were conducted at the suggestion of, or with the concurrence of, the Federal Bureau of Investigation.

It is my opinion that polygraph devices should not be used to screen applicants or for other personnel inquiries and, to the best of my knowledge, they are not so used in the Federal Reserve System. With respect to the administration of polygraph tests in the course of an investigation of a reported crime, the use of such tests in aid of the investigative effort is a matter properly left to the investigative agency for determination. As indicated, use of the polygraph test at the suggestion and under the direction of an official investigative authority has proven to the Reserve Banks involved to be a useful element in the investigative process.

In order that each of our Reserve Banks may be informed of the positions reflected in the Committee Report as well as my views thereon, I am forwarding copies of the report and of this letter to the President of each Federal Reserve Bank.

Sincerely yours,

ARTHUR F. BURNS.

THE POSTMASTER GENERAL,  
Washington, D.C., April 6, 1976.

Hon. BELLA S. ARZUG,  
Chairwoman, Subcommittee on Government Information and Individual Rights, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR Mrs. ARZUG: This is in further reply to your letter of January 29, 1976, requesting the Postal Inspection Service discontinue the use of polygraph examinations.

The polygraph examination is used by the Postal Inspection Service in some criminal investigations to narrow a list of suspects after other investigative methods have failed. The Inspection Service does not use the examination in lieu of standard investigative procedures, but only as an aid or adjunct to an investigation. Experience has shown that the results of polygraph examinations identify the deceptive employee; however, by far the greatest benefit derived from the use of the polygraph is in clearing those employees who have no knowledge of a particular criminal violation.

Since the 1964 study by the Foreign Operations and Government Information Subcommittee into the use of the polygraphs by the Federal Government, the Inspection Service has improved and modernized its polygraph program. Qualifications for polygraph examiners have been made more rigid so that now all Inspection Service examiners receive in-depth training at a recognized polygraph school and have college degrees as well as a background in criminal investigations. In addition to the formal training at a recognized polygraph school, all examiners receive on-the-job training as well. A quality-control system has been implemented to insure that the results of each examination are reviewed by a second examiner.

Polygraph examinations are conducted exclusively on a voluntary basis. No stigma is attached to a postal employee who declines to take a polygraph examination and adverse action is not taken against any person for unwillingness to volunteer to take the examination. In fact, information concerning an employee's refusal to submit to the examination is not recorded in any of his personnel files.

It has been our experience that the polygraph examination has proven to be a valuable aid in certain investigations. We, therefore, propose to continue to utilize this supplementary investigative technique in selected situations.

In view of the foregoing, no study of potential savings from the discontinued use of the polygraph examination has been made.

Sincerely,

BENJAMIN F. BAZAR.

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CONGRESSIONAL RECORD—HOUSE

April 13, 1976

DEPARTMENT OF THE TREASURY,  
Washington, D.C., March 1, 1976.

HON. BELLA S. ASZUG,  
Chairwoman, Government Information and  
Individual Rights Subcommittee, Com-  
mittee on Government Operations, House  
of Representatives, Washington, D.C.

DEAR MADAM CHAIRWOMAN: This responds to your letter of January 29, 1976, to the Secretary transmitting a copy of a report by the Committee on Government Operations which recommends that the use of polygraphs and similar devices be discontinued by all government agencies. Your letter also requests that we advise you of when the Treasury Department and its components intend to discontinue use of the polygraph.

After examining not only the recent House Report (94-795) but also the June 1974 hearings before your predecessor subcommittee and the testimony and exhibits of the Treasury Department, it is our judgment that the Treasury Department should not discontinue the limited use of polygraph devices by its law enforcement units.

The polygraph is used sparingly by Treasury enforcement agencies as one among many investigative techniques. It is not a general exploratory mechanism but is used in those few cases where other circumstances indicate it may have some value to the investigation.

We believe that our use of the polygraph as an investigative technique is proper and beneficial. We find nothing in the Report or the hearings on the polygraph to persuade the Treasury Department to relinquish this useful instrument in the repository of criminal investigative techniques.

We will, of course, continue to oversee the use of polygraphs and other investigative methods and to take such measures as are needed to continue achieving effective enforcement of the law within our constitutional framework.

With best regards,

Sincerely,

DAVID R. MACDONALD,  
Assistant Secretary, Enforcement, Op-  
erations and Tariff Affairs.

CENTRAL INTELLIGENCE AGENCY,  
Washington, D.C., February 25, 1976.

HON. BELLA S. ASZUG,  
Chairwoman, Subcommittee on Government  
Information and Individual Rights,  
Committee on Government Operations,  
House of Representatives, Washington,  
D.C.

DEAR MADAM CHAIRWOMAN: This is in reply to your letter of 29 January 1976 submitting a copy of the report of the Committee on Government Operations, House Report 94-795, entitled "The Use of Polygraph and Similar Devices by Federal Agencies" and requesting certain comments concerning the Agency's continued use of the polygraph.

If legislation was enacted to prohibit the use of the polygraph by all government agencies for all purposes as recommended on page 46 of the report, it would seriously impair the Director of Central Intelligence from complying with his statutory responsibility under the National Security Act of 1947. I refer to Section 102(d)(3) of the Act which makes the Director responsible for the protection of intelligence sources and methods from unauthorized disclosure. An effective personnel security program is vital to assure this protection.

The polygraph is an integral and essential part of security processing to determine the security eligibility of persons for Agency employment and for operational purposes. As statistics illustrate, during the period 1963 through mid-1974, of those applicants for employment rejected on security grounds, over 80 percent were rejected on the basis of information developed principally or solely during polygraph interviews. In a sampling of

recent records, about half of the applicants who had been disapproved on the basis of information developed during polygraph interviews had already completed all other security screening and been provisionally approved on this basis. Without the polygraph program, the disqualifying information on these cases would have remained unknown. In addition, it is reasonable to presume that the program is a significant deterrent to application for employment by unsuitable candidates, and more importantly, penetration attempts by foreign intelligence services.

The utility of CIA's polygraph program is not solely a function of its part in contributing information leading to the rejection of unsuitable candidates. The preponderance of polygraph interview reports are favorable. Most of these favorable reports constitute useful and comforting confirmation of other screening procedures; the remainder represent favorable resolutions of allegations or suspicions which otherwise could result in injustices or in unnecessary defensive measures.

The Central Intelligence Agency has consistently urged continuance of its polygraph program in its reports to congressional committees on proposed legislation and hearings concerning the polygraph. We note in the Dissenting Views of your report, on page 58, that on 25 March 1975, based on the hearings held in 1974, that the Subcommittee initially approved a recommendation which would have prohibited the use of the polygraph in all but cases involving national security and for law enforcement purposes provided fifth amendment rights under the Constitution were not violated. This concern for national security was recognized by former Senator Sam Ervin, a strong advocate of individual rights, though he otherwise objected to the use of the polygraph. In his proposed legislation to protect the personal privacy of government employees, introduced during several Congresses prior to his retirement from public office, Senator Ervin expressly excepted the CIA and the National Security Agency from the provision barring the use of the polygraph in Government. Senator Ervin's last bill was S. 1688, Senate Report 93-724, which passed the Senate 7 March 1974.

The CIA is cognizant of the danger of abuse inherent in the use of any instrument used to aid in distinguishing truths from untruths. Consequently, we have adopted strict procedures to prevent abuses and to protect those taking the examination. These include:

Notification to each applicant for employment at the time he is given an application form of the intent to use a polygraph examination in the course of his employment processing;

Coordination with the Office of Personnel and the Office of Medical Services to determine if a polygraph interview is advisable; Advance written consent of the applicant;

Notification of the privilege against self-incrimination on questions pertaining to violations of criminal law;

Reviewing all questions with the applicant before testing;

Limiting questions to those exclusively related to security issues;

Informing the applicant that the examination may be monitored and possibly recorded to let him know there are no hidden procedures;

Random monitoring by a specialized supervisor to insure that no improper questions are asked;

Maintenance of polygraph records in separate files with very strict need-to-know rules governing access;

Prohibition of release of polygraph-acquired information outside the Agency without my approval or that of the Deputy Director and only if such a release is necessary in the interest of national security;

The polygraph examiner makes no recommendation as to the security suitability of the person tested; and

Evaluation of the polygraph report is but one element in the total personnel security screening program.

With respect to reliability, defined in accordance with scientific convention as the consistency of the interpretations of the polygraph charts, agreement studies were conducted as part of an Agency research program which was initiated partially in response to the hearings held by the Foreign Operations and Government Information Subcommittee in the early 1960's. Numerical results of these studies are complex and would require extensive explanation, but comparisons may be useful. Comparable studies of similar professional groups are scarce but two were found, involving cardiologists evaluating EKG charts for cardiopathology and psychologists evaluating MMPI test results for psychopathology. The CIA polygraphers' chart interpretations were as good as or better than these two groups.

Finally, the selection of polygraph officers is extremely discriminating as to their qualifications, intelligence, integrity, and high character. They are given a rigorous training program which is a continuing process to keep them abreast of developments in their professional field. CIA has maintained a vigorous research effort inquiring into new techniques and equipment to insure that the highest standards are maintained.

In view of my statutory responsibility to protect intelligence sources and methods and the proven reliability of the polygraph and the safeguards in its utilization, I must disagree with the recommendation of the Committee. This Agency's personnel security standards must be maintained at the highest levels. Termination of the Agency's polygraph program would increase its vulnerability to hostile penetration and would seriously impact on the Agency's effectiveness in carrying out its foreign intelligence collection mission.

Sincerely,

GEORGE BUSH,  
Director.

H.R. 3353

A bill to protect the constitutional rights of citizens of the United States and to prevent unwarranted invasion of their privacy by prohibiting the use of the polygraph-type equipment for certain purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 13, of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 246. Polygraph testing in connection with employment

"(a) For purposes of this section, the term—

"(1) 'polygraph test' means an examination administered to an individual by mechanical or electrical means for the purpose of measuring or otherwise examine the veracity or truthfulness of such individual; and

"(2) 'employee organizations' includes any brotherhood, council, federation, organization, union, or professional organization made up in whole or in part of employees and which has as one of its purposes dealing with departments, agencies, commissions, independent agencies of the United States, or with businesses and industries engaged in or affecting interstate commerce, concerning the conditions and terms of employment of such employees.

"(b) (1) Any officer or employee or person acting for or on behalf of the United States who willfully—

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"(A) permits, requires, or requests, or attempts to require or request, any officer or employee of the United States, or any individual applying for employment as an officer or employee of the United States, to take any polygraph test in connection with his services or duties as an officer or employee, or in connection with such individual's application for employment; or

"(B) denies employment to any individual, or discharges, disciplines, or denies promotion to any officer or employee of the United States, or threatens to commit any such act by reason of his refusal or failure to submit to such requirement or request, shall be guilty of a misdemeanor and punished by a fine not exceeding \$1,000.

"(2) Any person engaged in any business or other activity in or affecting interstate commerce, or any individual acting under the authority of such person who willfully—

"(A) permits, requires, or requests, or attempts to require or request any individual employed by such person or any individual applying for employment in connection with such business or activity to take any polygraph test in connection with his services or duties or in connection with his application for employment; or

"(B) who denies employment to any individual, or discharges, disciplines, or denies promotion to any individual employed in connection with such business or activity, or threatens to commit such act by reason of his refusal or failure to submit to such requirement or request,

shall be guilty of a misdemeanor and punished by a fine not exceeding \$1,000.

"(c) (1) Whenever—

"(A) any officer or employee or any person acting for or on behalf of the United States, or

"(B) any person engaged in any business or other activity in or affecting interstate commerce, or any individual acting under the authority of such person,

violates or threatens to violate any of the provisions of subsection (b) of this section, any employee or officer of the United States, or any person applying for employment in the executive branch of the United States Government, or any individual seeking to establish civil service status or eligibility for employment in the United States Government, or any individual applying for employment in connection with any business or activity engaged in or affecting interstate commerce, or any individual employed by a person engaged in such business or activity, who is affected or aggrieved by the violation or threatened violation, may bring a civil action in his own behalf or in behalf of himself and others similarly situated, against the offending officer or employee or person in the United States district court for the district in which the violation occurs or is threatened, or for the district in which the offending person is found, or in the United States District Court for the District of Columbia, to prevent the threatened violation or to obtain redress against the consequences of the violation.

"(2) The district courts of the United States shall have jurisdiction to try and determine such civil action irrespective of the actuality or amount of pecuniary injury done or threatened, and without regard to whether the aggrieved party shall have exhausted any administrative remedies that may be provided by law, and to issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and other similarly situated complete relief against the consequences of the violation.

"(3) With the written consent of any person affected or aggrieved by a violation or threatened violation of subsection (b) of this section, any employee organization may bring such action on behalf of any such person, or may intervene in such action."

(b) The analysis of chapter 13 of such title is amended by adding at the end thereof the following new item:

"246. Polygraph testing in connection with employment."

SEC. 2. The amendments made by this Act shall become effective thirty days after the date of enactment.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Hawaii (Mr. MATSUNAGA) is recognized for 5 minutes.

[Mr. MATSUNAGA addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

#### PASSOVER IS A TIME TO REMEMBER THE PERSECUTED JEWS OF THE SOVIET UNION

The Speaker pro tempore. Under a previous order of the House, the gentleman from Connecticut (Mr. COTTER) is recognized for 5 minutes.

Mr. COTTER. Mr. Speaker, millions of Jews throughout the world will begin Wednesday night to relive the events of the Passover, the night when the Lord liberated the people of Israel from slavery. When they celebrate the ancient liturgy of the Seder, the Jewish community in this country will hear once again a story of hope: the story of the Exodus.

Passover has always had a poignant meaning during times of persecution and suffering. When the Jewish people were dispersed from the land of Israel by Roman armies, they shared the bread of affliction and recalled God's promise of freedom. When they languished in the ghettos of Europe, they encouraged each other with the words of the Book of Exodus:

"God heard our moaning, and God remembered His Covenant with Abraham, Isaac and Jacob. . . .

And even in the extermination camps of Hitler's Europe, where they were marked for death, they somehow found the courage to sing the joyous songs of Passover.

Mr. Speaker, Adolf Hitler belongs to the past, but the persecution of the Jewish people continues. Day after day we hear new stories of oppression from the Soviet Union, where Jews are denied the right to preserve their identity and, above all, where Jews are denied the right to return to the land of Israel. The Soviet persecution of these people violates the basic freedoms proclaimed in the United Nations Charter and the Helsinki accords, two documents which the Soviet Union has signed.

Mr. Speaker, we must not watch in silence while Soviet Jews are subjected to harassment, humiliation, and imprisonment. Let us not justify a tragedy with the pious apology: "We knew, but there was nothing we could do." Let us continue to work for the freedom of Soviet

Jewry. And let us join the Jewish people oppressed in any foreign land when they sing the old refrain of Passover:

"This year we celebrate here.  
Next year in the land of Israel.  
Now we are still bondsmen.  
Next year may all be free."

#### HUD SECRETARY IN VIOLATION OF INTENT OF LAW

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mrs. MEYNER) is recognized for 5 minutes.

Mrs. MEYNER. Mr. Speaker, I am certain that everyone in this Chamber is well aware of the problems facing homeowners with outstanding mortgages as our current economic crisis continues. Last year, this Congress wisely passed legislation designed to aid those mortgages threatened by foreclosure. The Emergency Homeowner's Relief Act provided for direct loans to be administered by the Department of Housing and Urban Development in order to prevent widespread foreclosures and distress sales of homes. The act empowered the Secretary of HUD to administer and implement the emergency program at her discretion.

Mr. Speaker, the Secretary has not released \$1 of the \$35 million that was appropriated for this program. And this funding expires in just a few months on July 1, 1976.

I believe that my record substantiates the fact that I support fiscal austerity and the decrease or omission of needless spending programs. However, I feel that it is the duty of the Federal Government to provide reasonable and fiscally responsible services to its citizenry. Consequently, I find the Secretary's decision to hold these funds in abeyance in direct violation of the intent of the law.

I speak of Secretary Hills' decision to withhold these funds until 1.2 percent of all mortgages in the Nation are 3 months or more in arrears. With apparent disregard for the realistic problem of regional unemployment and the varying socioeconomic levels throughout the country, the Secretary is depriving thousands of eligible Americans while she awaits statistical legitimacy. Certainly this amount to yet another example of bureaucratic disregard for the very real problems of our constituents.

Presently I am compiling statistics regarding mortgage delinquencies in the 13th Congressional District of New Jersey in an effort to present strong statistical evidence that clearly depicts the need for a revision of HUD's financing formula. Whether the total mortgage portfolio contains 1.2 percent of home mortgages 3 months or more in arrears, the fact remains that there are several hundred people in my district who could benefit from immediate regional implementation of this act. I will present my findings to you when they are completed. In the meantime, I urge my colleagues to ascertain the number and percent of delinquent mortgages in their districts and to join me in my attempt to correct this grave inequity.